IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9403 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HITESH ARJUAN PATEL

Versus

CHAIRMAN AND MANAGING DIRECTOR G.E.B/

Appearance:

1. Special Civil Application No. 9403 of 2004

MR BD KARIA for Petitioner No. 1

DS AFF.NOT FILED (N) for Respondent No. 1-2

MS SHRADDHA TRIVEDI for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 11/10/2004

ORAL JUDGEMENT

1. Rule. Ms. Shraddha Trivedi waives service for respondent no.3

2. The petitioner has challenged the impugned order dated 19th November, 2003 of the Appellate Committee of the respondent Board, in so far as it is against the petitioner.

3. Heard the learned counsel for the respective parties.

4. In the impugned order of the Appellate Committee it has been stated that both the parties have been heard. As against that the case of the petitioner is that the petitioner was called to appear before the Appellate Committee on 27th February, 2004 at 11:00 a.m. vide letter dated 24th February, 2004. However, the impugned order was passed by the Appellate Committee in the absence of the petitioner i.e. on 19th November, 2003. Therefore, it is clear that the said message was received by the petitioner after the proceedings were completed. Hence, the fact remains that the petitioner was not heard before the impugned order was passed.

5. Therefore, I am of the opinion that the petitioner is required to be given a chance of being heard. Accordingly, the impugned order is required to be quashed and set aside and the matter is required to be remanded to the Appellate Committee for fresh decision.

5. In the premises aforesaid, on the facts and circumstances of the case, the impugned order dated 19th November, 2003 passed by the Appellate Committee at Annexure-I to the petition is quashed and set aside. The matter is remanded to the Appellate Committee for deciding the appeal of the petitioner afresh after hearing the petitioner.

6. It is clarified that the Appellate Committee shall hear and decide the matter without being influenced by the earlier order which is quashed in the present petition and also the present order passed in the present petition.

7. However, the petitioner shall pay a sum of Rs.1500=00 (Rupees One Thousand Five Hundred only) to the respondent Board by way of costs within a period of three weeks from today and the appeal will be heard only after the payment of the aforesaid amount.

8. Rule is made absolute to the aforesaid extent.

[K.S. JHAVERI, J.]

/phalguni/